Supreme Court, U.S.
FILED

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CASE NO.

THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1994

LAWRENCE MOORE,

PLAINTIFF/PETITIONER,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 569; PAUL BLACKWOOD; THOMAS PRIDEMORE; JAMES WESTFALL; JOE HEISLER; DICK SMITH; TERRY GODSHALK, et al; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; J.J. BARRY; S.R. McCANN; RICHARD ROBBINS; ATKINSON MECHANICAL, INC.; FISCHBACH & MOORE, INC.,

DEFENDANTS/RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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98 pp

QUESTIONS PRESENTED FOR REVIEW

1. Can a district court distort the facts, law, and issues and try an issue never sued for to conceal racketeering by a defense contractor and two unions (the International and Local) to evade federal debarment orders and defraud the federal government out of hundreds of millions of dollars via a scam which also breached their collective bargaining agreements ("CBAs")?

2. Can the union business manager (who was once the defense contractor's supervisor and is one of the racketeers) and another contractor's supervisor collude to reject/blacklist a member properly referred through the CBA job referral procedure in order to punish him for protected union activities (suing the union and officers, and running for union office)?

3. Should officers found by a jury to have breached their fiduciary duties by taking union funds for golden parachute pensions be ordered to return the stolen money and union funds used by in-house counsel in their losing defense and should attorney fees have been assessed against

Plaintiff because he asked the court, on behalf of members, to recuse in-house union counsel?

4. Can an IBEW policy restrict a member's right to run for delegate to an IBEW convention where the IBEW constitution is written and its president, VPs and executive board are elected?

5. Is dismissal of a Secretary of Labor's suit under LMRDA Title IV, where Plaintiff was never a party, *res judicata* over his separate suit for pre-election violations of LMRDA Title I rights during the election campaign?

6. Can Local 569 officers fine, suspend, assault, batter, and ostracize a member in the union newsletter during election campaigns, and refuse him equal rights to run for office, have his Bylaws proposals voted on, or to oppose CBA proposals, and can IBEW officers refuse to act on charges against Local 569 and IBEW officers, complaints on Local 569 elections, and appeals of Local Trial Boards (as the IBEW constitution requires) pending resolution of this lawsuit -- especially since IBEW officers held complaints, charges and appeals against Local 569 officers

in abeyance but implemented those suspensions, fines, and expulsion from the union against the member, and vetoed his Bylaws which were passed at meetings held only after his suspension from attending (showing that the permission to vote was purely pretextual).

7. Can union members who are not members of the Building Trades division of AFL-CIO be forced to pay an assessment for that entity as a condition of working under a CBA, and should declaratory relief prayers for equal space in Local 569's newsletters and from that Building Trades assessment have been given to the jury rather than decided *sua sponte* by the court?

8. Can an attorneys fees award on related claims be limited only to claims won and rates actually paid rather than current market rates, can a *pro se* Plaintiff recover expert witness fees as part of an attorneys fees award, can a party who never appeared at trial get fees for a witness, and can costs of copying Plaintiff's entire case file be indiscriminately awarded to the IBEW as ostensible "exemplication" costs?

LIST OF ALL PARTIES

Plaintiff Lawrence Moore, and Defendants Local 569 of the International Brotherhood of Electrical Workers; International Brotherhood of Electrical Workers; J.J. Barry; S.R. McCann; Richard Robbins; Paul Blackwood; Wayne Lovin; Jim Westfall; Tom Pridemore; Joe Heisler; Dick Smith; Terry Godshalk; George England; Richard White; Keith Widdop; Kris Hartnett; Don Withem; Steve Workman; Mike Reilly; John Simpson; Ray Altmeyer; Jim Brandon; Chancy Tyler; George Scott; Bud Hahn; Sharon Hahn; Tom Boulter; Bob Riel; Jim Aylsworth; Charles Wilder; Mike Degener; Chet Holm; John Manion; Wally Gauntt; Gary Degener; Ron Whitaker; Atkinson Mechanical Contractors, Inc.; Fischbach & Moore, Inc.

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QUESTION I (at page 37, *infra*):

This petition should be granted because the district court's decision to make breaches of a CBA by a corrupt defense contractor and two unions subject to *ex post facto*, exculpatory decisions of a joint union management committee made up of those conspirators conflicted with applicable decisions of the Supreme Court.

QUESTION II (at page 42):

This petition should be granted because the district court's refusal to permit breaches of contract and unfair labor practices by the two unions and Atkinson to be litigated conflicts with applicable decisions of this Court, and appeals court affirmation requires exercise of the Supreme Court's power of supervision.

QUESTION III (at page 49):

This petition should be heard because the district court's decision to deny recovery of union funds (taken by self-dealing officers for golden parachute pensions and for their losing defense against the union's breach of fiduciary duty action, and to instead award attorney fees

against the member who successfully sued those self-dealing officers on behalf of the union) conflicts with decisions of all other courts of appeals on the same issues, because the appeals court sanctioned the outrageous departures from the usual course of judicial proceedings by the lower court (thereby requiring exercise of this Court's power of supervision) and because these two matters also present questions of federal law which have not been, but should be, decided by the Supreme Court.

QUESTION IV (at page 55):

The district court's decision to grant the IBEW and Local 569 summary judgment on claims that the IBEW "policy" used to stop Plaintiff from running for IBEW convention delegate was reasonable conflicts with applicable decisions of this Court, the appeals court overstepped boundaries of accepted procedure to sanction departures from the usual course of judicial proceedings by the lower court, and by calling a policy a rule to dismiss for lack of subject matter jurisdiction, thereby solicited exercise

of the Supreme Court's supervision powers.

QUESTION V (at page 58):

The district court decision to grant Local 569 summary judgment on grounds a suit by the U.S. Secretary of Labor under LMRDA Title IV was *res judicata* on Plaintiff's separate suit for violations of his Title I rights conflicts with applicable decisions of the Supreme Court, and appeals court use of sophistry to approve the lower court's false record and deliberately make its own false record requires exercise of the Supreme Court's powers of supervision.

QUESTION VI (at page 61):

Lower court summary judgment to Local 569, the IBEW and their officers on his claims they violated LMRDA §§ 101 and 609 by disciplining him conflicts with Supreme Court decisions, and by approving the lower court's false record the appeals court requires exercise of the Supreme Court's powers of supervision for application of false standards.

QUESTION VII (at page 64):

The district court's limitation of relief

from an illegal assessment only to Plaintiff in the face of his breach of fiduciary claims, and its insistence on trying claims for declaratory relief despite Plaintiff's clear request for a jury trial conflicted with applicable decisions of the Supreme Court, and the appeals court's sanctioning of those actions (by begging the question of whether Plaintiff was entitled to a jury trial and disingenuously holding he was never "accorded class representative status") requires exercise of the supervision powers of the Supreme Court.

QUESTION VIII (at page 65):

Awarding attorneys fees only for related claims won, refusing to award at market rates or to award expert witness fees with attorneys fees, and awarding of witness fees to Fischbach (who was never a party at trial) and of copying costs to the IBEW conflict with applicable decision of the Supreme Court.

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CITATIONS TO OPINIONS BELOW.

There were no opinions published below.

STATEMENT OF JURISDICTION.

The memorandum of the court of appeals was filed on June 10, 1994.

Jurisdiction was proper in the district court under 18 U.S.C. § 3231, 28 U.S.C. 1331. Appellate jurisdiction was proper under 28 U.S.C. § 1291. This Court has jurisdiction to hear this matter pursuant to Rule 10 of the Supreme Court Rules.

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STATEMENT OF THE CASE.

This case was filed on February 9, 1987, but actually started in 1985-86 after Fischbach & Moore, Inc., the country's largest electrical defense contractor, was convicted in District Courts in Georgia, Pennsylvania, Tennessee, and Maryland for anti-trust violations, bid-rigging income tax evasion and mail fraud, was debarred from federal jobs and began to collude with the IBEW and Local 569 to evade those debarments.

Plaintiff Moore did not become aware of Fischbach's full role until the eve of trial, when he finally got some answers to discovery requests filed years earlier. Fischbach was protected by the District and Circuit Courts.

This is one of a continuing series of cases filed by Plaintiff Lawrence Moore in attempts to stop wrongful terminations and blacklisting from employment, assaults, batteries, fines, suspensions and expulsion from Local 569. He has been unsuccessful despite winning jury trials in 1989 and 1991, and the jury verdict awards have been given back to defendants.

In 1982 Mr. Moore was a union electrician earning between $30-40,000.00 per year, but not active in union politics. After the Building Trades Division of AFL-CIO ("Building Trades"), the International Brotherhood of Electrical Workers ("IBEW") and Local 569 implemented a "sweetheart" agreement at San Onofre Nuclear Power Generating Station Moore was elected a delegate to the IBEW's 1982 convention on a platform of checking and balancing the IBEW's pervasive control over its Local Unions.1/

Moore was fired (the only time in 24 years) for refusing to enter a radioactive area of San Onofre, the contract grievance procedure failed and he sued all parties over obvious collusion

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1/. Such sweetheart contracts are erroneously called collective bargaining agreements ("CBA") but union members have no choice or vote. The sweetheart CBA eliminated radiation protections in Local 569's voted-on CBA (San Diego already had a budding "fusion" industry) and Local 569 then made job requests to San Onofre mandatory. Arbitrary imposition of such CBAs was approved in *Stelling v. Intern. Broth. of Elec. Workers, etc.*, 587 F.2d 1379 (9th Cir. 1978). The CBA (sic) also established a "grievance procedure," which was ultimately controlled by the Building Trades Division, but it was impossible to even discover who was the bargaining representative.

and bad faith during the grievance processing. The district and circuit courts dismissed for defective service, this Court reversed, and the Ninth Circuit dismissed the suit again on the merits without permitting any discovery. *Moore v. Bechtel Power*, 840 F.2d 634 (9th Cir. 1988). He never worked regularly in San Diego again.

At a union meeting in May, 1984 Moore was shouted down, assaulted, battered and prevented from speaking against a dues increase, by Local 569 officers Heisler, Flowers, Lovin, Westfall, Blackwood and Pridemore. Subsequently Flowers lived in the union hall, was paid "consulting fees" by Blackwood and Westfall, and assaulted Moore with guns and battered him several times.

In 1985 Moore filed suit against Local 569 and IBEW officers who blacklisted him, violated his rights, and assaulted and battered him, and against Local 569 officers and Baker Electric, Inc., whose owner was the president of the San Diego Nat'l Electrical Contractors Association ("NECA"), for refusing to accept his CBA job referral without cause. *Moore v. Local 569*,

989 F.2d 1534 (9th Cir. 1993), *on Petition for Writ of Certiorari*, Case No. 93-1026.

As with Bechtel, Baker Electric escaped via decisions of a joint union-management committee which NECA, Local 569 and lower courts insisted was "arbitration" and *res judicata* on causes of action for breach of contract and union duty of fair representation. In the Ninth Circuit such phony arbitration, like sweetheart agreements, has become institutionalized. See *infra*.2/

Moore also worked for L & B Electric, Inc. (owned by a NECA treasurer) for a month before discovering he was exposed to asbestos (L & B was renovating a chain of department stores and asbestos control cost $350-450,000.00 for each of three jobs in Los Angeles). He was laid off

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2/. NECA's manager (hired by Baker) and Local 569 officer Hartnett (Baker's foreman who was a defendant there and here) jointly appointed the third member of that committee, but Moore had no success pointing out their obvious bias, that the CBA limited them to overseeing Local 569's administration of the CBA job referral procedure, that they had no jurisdiction over employers, or that Baker Electric was never a party either before the committee or to Moore's suit to vacate the committee's decision which exceeded its jurisdiction and cleared Baker.

after complaining about lack of control in San Diego, but Cal-Osha did cite L & B for exposing its employees. Local 569 officers pretended to deadlock with NECA officers on a grievance, but at the San Diego joint Local 569-NECA committee the IBEW, despite no CBA status, intervened and the grievance was sent to another union-NECA committee (CIR) which then found for L & B.3/

Moore filed this suit on February 9, 1987, and sued Fischbach & Moore, Inc. ("Fischbach"), and IBEW and Local 569 defendants for breaching a CBA by conspiring to evade Federal debarments by transfers of workers to Fischbach's "puppet" entities and doing business as usual.

He sued Atkinson Mechanical Contractors Inc ("Atkinson") and Local 569 officers after they blacklisted him and rejected his acceptance of Atkinson's CBA request for an electrician.

3/. Moore uncovered a secret letter to a second committee (CIR) from IBEW agent Robbins, urging the CIR to find for "our good union contractor" and castigating Moore. Robbins also admitted interfering in the first hearing, but it didn't cut any ice with the lower courts. Dismissal was affirmed in an unpublished opinion.

He also sued Union Defendants for violation of his LMRDA Title I (29 USC 411) rights during an election and several phony Trial Boards, of violating fiduciary duties under LMRDA § 501 by stealing union funds, and for effecting "CBAs" (sic) arbitrarily, and for § 629 discipline.

Although he won a jury trial on most issues the district court had its own agenda on others and ensured he did not win some, that some were never presented to the jury, and that the jury decisions were *de facto* vacated on others.

In May, 1986 Fischbach laid Moore off to hide transfers of its employees (including the son of Local 569 business manager Smith) to a "puppet company," Corbin Dykes Co.4/

In May, 1986 Moore was nominated for both IBEW convention delegate and as a candidate for business manager of Local 569 against incumbent

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4/. Local 569 can be the only CBA source of electricians, but after Corbin Dykes Co. signed the CBA on April 30, 1985 Fischbach transferred its employees and equipment to Corbin Dykes Co. as part of its plan to avoid Federal debarment. Fischbach and Local 569 business managers Smith Blackwood, and Pridemore permitted transferring until Corbin Dykes was also debarred in 1988.

Paul Blackwood and Fischbach supervisor Smith, who eventually won (Fischbach needed compliant business managers). Moore was not permitted to run for delegate by the election judge (Smith's daughter-in-law). That election was validated by the IBEW, but the U.S. Dept of Labor (DOL) investigated and demanded a new election, and business manager Smith refused. The DOL sued to force a new election in December, 1986.

In September, 1986 Moore opposed increase of an assessment levied on members for the Building Trades Division of AFL-CIO because of an illegal vote. The IBEW ordered a second vote in December, 1986. It was also illegal.

Moore's hiring hall referral to Atkinson in October, 1986 was rejected despite not working for it before and not knowing supervisor Billy Wells, who admitted rejecting him for protected "union-connected" activities.5/

5/. Atkinson, an out of town contractor, hired Wells locally on Smith's recommendation. Wells had been one of the first Fischbach transferees to Corbin Dykes Co., and in a deposition Wells acknowledged his sympathetic relationship with Smith and the other Defendants in this case.

Five minutes after Moore accepted the job request for an electrician, Smith's assistant Godshalk telephoned Local 569 agent White 125 miles away and told him Moore was on his way to the job site near White's office. As he drove to Atkinson's job site, Smith, White and Wells had several telephone conversations, Wells said he would reject Moore, and Smith approved.6/

Moore returned to Local 569 and filed a grievance on the rejection with Godshalk, who threw Moore a candy saying, "Here's a kiss to go with the kiss-off," and Smith dismissed the grievance. Moore complained to the referral procedure Appeals Committee. Smith dismissed that because Atkinson refused to participate.

From August to October, 1986 a CBA proposal (covering the rest of Local 569's jurisdiction) with NECA was rejected repeatedly by Local 569 members, but was brought back repeatedly until it passed at a poorly attended meeting. Moore

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6/. After Local 569 produced partial telephone records three times, Moore subpoenaed originals from the telephone company showing their calls.

had opposed that CBA proposal. In November he was assaulted by an electrician he didn't know as business manager Smith looked on.

Internal Union charges were pressed against Moore for assaulting the assaulter, Moore was fined $500.00 and suspended from union meetings by a Local 569 Trial Board made up of Altmeyer, England, Reilly, Withem, Hartnett, Simpson and Workman. Several witnesses testified Moore was assaulted, and only Smith backed the assaulter.

Moore filed this suit on February 9, 1987. In March, 1987 Gary Degener threatened to kill Moore in the union hiring hall while assistant business manager Godshalk watched.7/ In April, 1987 Smith removed Moore from the hiring hall out of work list. The Trial Board decision was set aside on July 6, 1987 because of bias, and the court granted Moore a TRO against the Local

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7/. Smith and Godshalk contacted IBEW local unions where Moore had worked in California and Nevada since 1982, to blacklist him (they swore they only "warned" Locals about him). Degener followed Moore to those Locals to see if he was on out-of-work lists. He also drove alongside Moore on a freeway and pointed a gun at Moore's head, but the driver braked and swerved.

Defendants fining and suspending him.

During 1987 Smith and Local 569 president England tried four times to have CBA proposals ratified by members, but were rejected because, as in 1986, they reduced wages by a third. In October, 1987 Smith, Hartnett, and England also read new Bylaws proposals to raise union dues, and Moore read proposals to lower dues and for a mandatory procedure for submitting such CBA proposals to members. Moore's proposals were ruled out of order (without a vote) at meetings on orders from IBEW vice-president McCann.

In November, 1987 Smith and England signed the proposed CBA without members' approval. In November, 1987 a Trial Board presided over by Smith's appointed agent White (who was involved in Atkinson's rejection) and made up of Moore's political adversaries Brandon, Scott, Boulter, Tyler, Hahn and Hahn fined and suspended Moore exactly the same as before on the same charges.

The court denied Moore a second TRO saying they would just keep trying and his remedy was to get to trial. Altmeyer ordered Moore out of

a March 9, 1988 Union meeting (England ordered him out of meetings after the first decision), and another one year suspension began.

In 1988 Smith and Altmeyer (appointed as president after England resigned) failed three times to get the CBA they had imposed in 1987 approved by the members. In August, 1988 IBEW president Barry forced a new Bylaw on Local 569 (no vote) providing for a one-time-mail-in-vote on the 1987 CBA. All the ballots and envelopes were sequentially numbered, ninety-one ballots were disqualified. The CBA passed by 7 votes.

In August, 1988 IBEW president Barry also ordered a vote on Moore's Bylaws proposals and Moore also wrote a Bylaw providing for recall of officers.8/ Despite Moore's suspension the procedure for submission of CBA proposals, for recalling officers, and two others passed, but

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8/. Local 569 and IBEW officers were prompted to permit votes by Moore's motions to amend the complaint to add LMRDA Titles I and V claims (violations of rights and breach of fiduciary duty), and LMRA § 301 (breach of the Local 569 Bylaws and IBEW constitution contracts) against them for activities related to Trial Boards, CBA implementations and his Bylaw proposals.

Barry then vetoed them all. In February, 1989 Local 569 stipulated to let the DOL supervise the regular election in June, 1989 and the DOL withdrew its lawsuit on the 1986 election. In December, 1989 Moore won the trial in the case he filed in 1985. Business manager Pridemore demoted Moore to out-of-work list Group Two, and he, Blackwood and Westfall filed charges against Moore for suing them and winning.

In March, 1990 a Trial Board presided over by Local 569 treasurer Riel, Aylsworth, Wilder, Manion, Mike Degener (Gary's brother), Holm and Gauntt expelled Moore from the Union on charges he sued Pridemore, Westfall and Blackwood.9/

Moore filed charges against Local officers

9/. Trial Board officers were again hand-picked enemies of Moore. Riel was a supervisor for Dynalectric, Inc., convicted with Fischbach & Moore, Inc. in Georgia district court for bid-rigging, mail fraud and anti-trust violations, Manion and Degener were foremen for Westfall's boss at Local 569's Apprentice Training Trust (who, with co-trustees Blackwood, Pridemore, England and NECA's and Dynalectric's managers, had appointed Westfall as Trust Director), and the others were part of the small group which was regularly appointed to Local 569 Trusts or CBA negotiating committees.

with the IBEW vice president as required under the IBEW constitution for all their actions but in contrast to trial boards for charged members there is no provision for a hearing on charges against Local officers, and IBEW officers can't even be charged. IBEW VP McCann held charges against Local 569 officers in abeyance until this suit was resolved, based on IBEW "policy" but in violation of the IBEW constitution.

The same suit prompted no "abeyance policy" for Trial Board decisions on Moore (limited to an appeal to the IBEW) and McCann affirmed all penalties. Moore appealed affirmation of Trial Boards and the 1986 election to IBEW president Barry, and charged Barry, McCann and Robbins with interfering in Local 569's Bylaws and 1988 CBA proposals voting. Barry did not act.

Moore added a cause of action for breach of fiduciary duty by Local 569 officers' taking of union funds to buy themselves inflated pensions and after satisfying Ninth Circuit "good cause" criteria for filing such actions, then moved to recuse in-house union counsel from representing

the officers on that claim. The court denied recusal and ordered him to pay in-house counsel $6,846.75 costs for bringing the motion.10/

The jury found officers breached fiduciary duties and Moore asked the court to order that money taken for pensions and attorney fees used for their losing defense be repaid, that those pensions be modified, and that a $6,846.75 bond be returned to him, but the court refused.

The Appeal Court repeated officers' losing defense (that they were entitled to 48 credits per week and could take even larger credits). They produced no evidence of hours worked.

The circuit court also erroneously held the district court acted within its "discretion" by declining to order Defendants to reimburse the Local for money taken for inflated pensions and

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10/. The circuit court also wouldn't order the $6,846.75 returned to Moore because he "had not demonstrated a reasonable likelihood of success on his § 501 claim" (he won the claim on behalf of members), and said he hadn't made a "timely" request (not true). There is no "likelihood of success" test for filing LMRDA § 501 claims or recusal motions, and the court admitted at oral argument the money should be returned when and if it affirmed jury verdicts (S. Appx. at 120).

for their losing defense, thereby overruling the jury and ignoring Moore's prayer for relief on behalf of the victims -- union members.11/

Moore showed good cause and was permitted to amend to add fiduciary duty breaches against IBEW officers for violating Local 569's Bylaws and the IBEW constitution to implement CBAs in the face of repeated membership rejections.

11/. The Pension Trust was created by the CBA, which stated one pension credit (and one Health Trust credit) is paid for each CBA hour worked. Union officers were not even covered by the CBA or entitled to receive 40 credit-hours per week where the salaried rate favored them over other hourly paid electricians. *Donovan v. Daugherty*, 550 F.Supp. 390 (D.C. Ala. 1982). *Nachwalter v. Christie*, 805 F.2d 956 (11th Cir. 1986) (a plan must be maintained pursuant to the written instruments). Electricians average 1500 credits per year, but officers took 2500 per yr minimum and also sometimes took 208 credits for 2 weeks (80 was normal) and 430 hours for 7 days. But they concurrently paid only 1500 credits per yr into the Health Trust because benefits did not increase if they paid even 40 credits per week.

Fischbach paid Smith while he campaigned for business manager and gave him a week of extra Pension Trust credits monthly, violating a one-credit-for-one-hour-worked CBA limitation, and Fischbach gave him hundreds of pension credits as a gift on becoming business manager, other Union officers regularly inflated their Pension credits with Union funds, and Smith's son and daughter-in-law transferred from Fischbach to Corbin Dykes Co. without ever going through the CBA out-of-work list.

But the court then dismissed IBEW president Barry from § 501 fiduciary duty claims saying failure to act on appeals of the Trial Boards, vetoing of properly passed bylaws (including a procedure for ratifying CBAs and for recalling Local Union officers), and shoving the tainted one-time-mail-in-vote down the members' throats only violated Moore's LMRDA § 101 rights, and that his dismissal from § 501 was on behalf of Defendants McCann and Robbins also.

After Moore filed notice of default against Barry, and despite its holding that Moore had an LMRDA Title One claim against him, the court refused to enter default, and held it had no *in personam* jurisdiction over Barry and dismissed him from the action "globally" (those ludicrous obfuscations, affirmed on appeal, allowing the escape of a union president beg for exercise of the Court's supervision power (S. Appx., 55)).

Plaintiff had no success getting discovery. A motion to compel discovery from Atkinson was never acted on. On October 30, 1989 Atkinson moved for summary judgment, and was supported

by a declaration of Smith. Moore's opposition included an FRCP 56(f) Declaration, but it was dismissed on April 16, 1990 (S. Appx., at 3).

Moore filed three motions to compel against Fischbach, and one was finally granted but had no effect. After a second order to comply with discovery requests, it moved for a protective order and stay of discovery (both were denied) and still refused to produce responses.

Moore asked the court to find Fischbach and its attorneys in contempt for still refusing to respond, and after six months of supplemental motions and declarations Fischbach and counsel were ordered to show cause why they should not be found in contempt.

Moore filed more supplemental papers to his contempt motion, showing the misrepresentations by Fischbach, and after another two months some documents showing a national scheme by the IBEW and Fischbach to evade Federal debarment orders by transfers of personnel to other corporations were produced. Six days before trial Fischbach finally produced documents showing transfers to

Corbin Dykes Co. from July, 1985 to August, 1988 in San Diego, and to Dynalectric, Inc.12/

Moore immediately moved to amend his DFR claim against the Unions, to add Dynalectric, Inc. as a defendant and for class certification on behalf of the other electricians wronged by Fischbach's transfers, but was denied. Claims against Fischbach for inflating Smith's Pension account, interference with the Union election,

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12/. Corbin Dykes Co., an Arizona corporation, is owned by Fischbach & Moore Inc., a New York corporation owned by Fischbach Inc., a New York holding company which controls many entities, including Natkin Group Inc. which had supported Blackwood for business manager in 1986, while Fischbach & Moore Inc. supported its supervisor Smith. The payroll for San Diego electricians transferred to Corbin Dykes was $1,776,191.27.

The Federal government finally got wise and debarred Corbin Dykes Co and 14 other companies serving the same Fischbach "puppet" role around the country. The 14 other entities, which were in large Federal markets nationally, were never identified to Moore as transferees by Fischbach despite specific, years old requests, but the IBEW claimed 10,000 electricians were involved. Some idea of the amounts of money involved can be gotten from the fact that Dynalectric Inc. and its parent Dynalectron (much, much smaller than the Fischbach group) earned $640.3 million the year prior to its debarment for indictments (on conspiring with Fischbach to rig bids on an EPA waste water treatment plant in Georgia) and a third came from the Dept. of Defense alone.

wrongful firing of Moore, blacklisting, and for intentional infliction of emotional distress were included and were also denied.

He was also denied leave to add a claim for conspiracy against both Fischbach and the union Defendants, but the court said it would revisit that request during directed verdict motions. Union members are foreclosed from racketeering suits available to other citizens because they bargain collectively (Defendants and the Ninth Circuit have made collective concepts a farce). Labor Management Relations Act "pre-emption" applies also to such RICO claims. *Brennan v. Chestnut*, 973 F.2d 646 (8th Cir. 1992) citing *Butchers Union, Local 498 v. S.D.C. Investments Inc.*, 631 F.Supp. 1001 (E.D.Cal. 1986).

Moore also moved to compel discovery from Local 569 and the IBEW, and moved to find them in contempt for destroying the absentee ballot requests and ballots from the 1986 election and the tainted ballots from the August, 1988 CBA ratification mail-in vote pursuant to Barry's "Bylaw." They also continued to stonewall.

Moore also moved for contempt against IBEW and Local 569 attorneys for interfering with a witness who told Moore that officers, including Pridemore, announced at a meeting that he was expelled from the Union before his expulsion. Contempt matters were always referred to the magistrate and never acted on. Discovery was never completed against any parties.

Moore sued Fischbach for breaching the CBA by acting as a source of electricians for other contractors, and Union Defendants for breaching the DFR to administrate the CBA-created hiring hall fairly. On February 20, 1990 Fischbach's summary judgment motions on grounds transfers were permitted because it and Corbin Dykes Co. were the same corporation were denied.13/

The court called Corbin Dykes Co. a "puppet company" after Fischbach and the Unions offered the need to conspire to evade debarment orders

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13/. They were held to be separate corporations but a year later it became an issue of fact. Smith and Pridemore had submitted declarations supporting Fischbach, and Pridemore and NECA's manager supported Fischbach's later motions.

as their justification for violating the CBA by the transfers of employees, expressed amazement at their audacity in admitting it to a Federal judge, but finally said he didn't care because the conspiracy "is not before me" (but it was).

The court said it couldn't grant Fischbach summary judgment because they had "urinated in their nest" by having Corbin Dykes separately sign Local 569's CBA (scolding counsel that it was bad advice and unnecessary to effect their ends), and suggested the parties should take it to the CBA's grievance committees. Local 569's motion for summary judgment was also denied.

Months later Fischbach, Local 569 and NECA met in *ex post facto* "grievance" committees and approved illegal transfers, and brought another motion for summary judgment on grounds that the approval was *res judicata* on Moore's breach of contract claims in district court (Local 569 wrote Moore a "committee" would reconsider that issue, but Moore wrote back and refused to have anything to do with their "low-life dealings").

No grievance existed, committee members

were hostile to Moore, he was not told about a later meeting which had okayed those transfers (on grounds Fischbach & Moore, Inc. and Corbin Dykes Co. were only one corporation, ignoring the district court's contrary decision a year earlier), and that motion was also denied.14/

Fischbach produced documents implicating IBEW president Barry in that nation-wide scheme to evade Federal debarments (Barry had appeared on Fischbach's behalf at the debarment hearings and a Fischbach officer swore in a declaration that the IBEW prevailed on its locals to permit transfers. Leave was denied to add Barry, and the IBEW was also eventually dismissed.

14/. S. Appx., at p. 5. No grievance was ever submitted to those joint committees convened by Local 569, and since business managers Smith and Pridemore had admitted breaching the DFR to administer the CBA referral procedure fairly by aiding Fischbach's attempts to evade debarment, Local 569's use of the grievance procedure on behalf of Fischbach plumbed new depths of DFR breach. The court cited *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976) to hold that Fischbach was not protected by joint committees from Moore litigating the breaches of contract. As usual, the grievance committees were stocked with Pridemore, Defendants (Moore had judgments against one) and NECA and Dynalectric managers.

In orders filed on May 2, June 5 and July 16, 1994 in response to motions by Defendants, when Moore could oppose and file declarations, most causes of action survived, but Fischbach's trial was bifurcated (Moore objected colluding parties must be tried together) (see orders at S. Appx., at pp. 23-51, 52-60, and 61-73).15/

The court sua sponte questioned Moore's standing and Fischbach moved again to dismiss, supported by Local 569 and by Declarations of Pridemore and others fraudulently asserting only four electricians had been transferred. Fischbach made later motions to dismiss and reconsider denials of summary judgment, and they were also denied.16/

But the first day of trial the court said

15/. Bifurcation was a pretextual device to exclude evidence of the conspiracy on grounds that "motive is not an element of breach of contract," pre-empting Defendants' bad faith.

16/. Fischbach motions included declarations by Pridemore (chairman of one joint committee and supposed Moore advocate at another), NECA's manager (secretary of the first committee who appointed management members), and by Barry's appointed secretary of another committee, who appointed the Union members).

it would hear motions in limine. During three days of sophistry all evidence of transfers and debarments was excluded, Local 569 was switched to be tried first, Moore was told he must prove Local 569 breached its DFR in the *ex post facto* grievance hearing before the breach of contract against Fischbach would be tried (causing Local 569 to exclaim, "the recipe gets better every time we re-cook it") over vehement objections by Moore, and all denials of Union motions for summary judgment were revisited.

The court said, "I'm not letting [the IBEW] out" of the Fischbach claim, but let it out of the claim for implementing the Atkinson "CBA," negotiated by the Building Trades and the IBEW, and signed by both Local 569's business manager and the IBEW president without a vote by Local 569 members, because of no "tangible evidence" (despite IBEW agent Robbins's written reports).

Claims against the IBEW and Local 569 under LMRDA Title I for preventing Moore from running for convention delegate were dismissed as "far short of the anti-democratic showing" necessary

to create an issue of fact as to reasonableness of the *policy* which prevented him from running. (The appeal court held Moore had challenged the rules governing eligibility, but he challenged the IBEW policy used to stop his candidacy on the pretext he also run for business manager (business managers are appointed delegates)).

The IBEW was held not liable for McCann's affirming and Barry not acting on the Local 569 Trial Boards and elections, or McCann stopping voting on and Barry vetoing proper Bylaws for approving CBAs and recalling officers, and the court held officers were not liable for damages for abusing Moore in Local 569's newsletter.

The court held Moore could not recover any damages for members who paid illegal increases in a Local assessment for the Building Trades, but he was granted summary judgment for himself and found to have no damages, even though that illegal increase is still in effect.

The court *sua sponte* held denial of summary judgment to the DOL in a suit under LMRDA Title IV to set aside the election was *res judicata*

on Moore's Title I claims for violations of his pre-election rights during two campaigns.

The IBEW's request to reconsider denial of summary judgment [for failure to act on Moore's charges that Local 569 officers interfered with complaints to the hiring hall Appeals Committee on the Atkinson rejection] was granted, and the court said Atkinson breached the CBA by refusal to participate in hearings, another indication summary judgment to Atkinson was premature.17/

Moore wasn't permitted to speak during that three day ambush (he made an offer of proof on evidence of debarments but was not permitted to describe it on the record). When Fischbach and the Union interrupted his opening statement ten

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17/. IBEW "policy" is to not act on charges against Local officers for abusing the hiring hall because the Local is members' exclusive bargaining agent, but the court found the "CBA" with Atkinson was "negotiated" by the Building Trades (S. Appx. at 26), undoubtably influenced by *Stelling v. IBEW Local 1547*, *supra*, p. 3 (it is not "patently unreasonable" for the IBEW to act as an "exclusive representative" without designation by bargaining unit members). But see *J.J. Case v. N.L.R.B.*, 321 U.S. 332 (1944).

The entire referral procedure is written by the IBEW and national NECA, and made mandatory in all IBEW Locals' CBAs by the IBEW.

times the court recessed the jury to warn Moore to keep his eye on the grievance hearing "ball" at trial. Moore protested breaches of the CBA referral procedure by Fischbach and Local 569 should be before the jury. The court ordered him to litigate the grievance committee issue, interrupted proof of management members' bias (including Dynalectric's and NECA's managers), saying his "neat theory" was irrelevant because they had "institutional bias," and only union members had a duty to be fair, and it ordered him to show only union committee members' bias.

Fischbach wasn't a party at the phony trial but made opening arguments, endless objections, did cross and direct examination of witnesses, interlocutory motions and closing arguments. Both Local 569 and Fischbach screwed with the evidence and the main exhibit was not accepted or given to the jury until after its decision.

The court followed up Fischbach's opening statement with a prejudicial instruction to the jury to accept "arbitration" as "legitimate and proper," and "Believe me, its a good idea," and

twice said if they found against Moore "we" can put it behind "us," and despite admitting (out of the jury's presence) "many gross failures in handling of the case" by the Unions, and that they and Fischbach went to the joint committees to "take the issue out of the district court," the jury was urged if it found against Moore "this part of the case is over and we'll go on to something else."18/

It then dismissed Fischbach because Local 569 waived any challenge by "acquiescence in F & M's transfer policy, prior to the raising of any complaint by plaintiff" (S. Appx., at 76), and held Unions must pay all damage if the jury found the joint committees tainted, whereupon IBEW counsel then shouted "I've always felt the grievance issue is a total red herring!" (sic). Fischbach was brought back, dismissed again, and awarded witness fees for a Union witness.

18/. At sidebar the court said comments on Moore to CIR by NECA's manager were scurrilous, scandalous, inappropriate, probably defamatory and irrelevant," (noting committee chairman Pridemore was Moore's "mortal enemy") but then stressed his "objectivity" before the jury.

Moore was not permitted to do any rebuttal to Local 569's case. The jury's deliberations were stopped to ask explanations of arbitrary, discriminatory and bad faith but were given the same instructions again, plus more negligence instructions, over Moore's objections. While paying lip service to the *Hines* doctrine, the court protected Fischbach from trial by flying in the face of *Hines*. Fischbach escaped.19/

Moore didn't have time at trial to make his case against Local 569 on Atkinson's rejection. Cross-examination of witness Wells was suddenly interrupted on grounds Moore's 15 minutes for an adverse witness was up when Wells testified he had intended to "knock [Moore] on his butt."

19/. Moore did not see any jury instructions or the verdict form (which prejudicially begged the question that transfers were a legitimate "practice") but defense counsel did. The court refused to instruct the jury that Unions had a statutory duty "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty and to avoid arbitrary conduct" (*Cf. Vaca v. Sipes*, 87 S.Ct., at 910 (1967)), and it would not give an instruction on motive and did not instruct that bias would impair a fair hearing.

Moore was also not permitted any rebuttal to Wells' testimony (the jury also interrupted deliberations to ask for a re-reading of Wells' testimony). When Wells was asked if he was concerned that Moore might sue Atkinson over his decision to reject Moore, Wells testified:

> At the time that didn't occur to me. What did occur to me was the fact that I had seen. . .Larry Moore doing what we call politicing (sic) on the job in my opinion for the prime purpose of being a manager of the Local Union or an officer of high stature or whatever, and/or using his--whatever you want to call it--law knowledge to slap 569's hands by suing them for various things if he didn't get what he wanted; that is the way I saw it.

Wells also testified that he had discussed Moore with Union business manager "Billy Dick [Smith]" and the other Defendants in this case, and he admitted warning another electrician if he wanted to work he shouldn't bite the [Union] hand that feeds him like Moore did. The court said Atkinson negotiated the right to "reject," but admitted Wells had "a foot in [the union] camp." Wells resentfully testified Moore was "a glory seeker for high union office."

The jury was given an inadequate bad faith instruction on Local 569's role in the Atkinson rejection (that same one used for the Fischbach issue: bad faith exists when a joint committee "skewed" hearings to get results other than obvious results). But no joint committee was even involved in the Atkinson case.

Other jury instructions did not adequately cover issues, correctly state the law, or state it at all, and were misleading (instructing the jury to ignore bias of the first trial board).

Moore never saw the first bifurcated trial jury verdict form, which begged the question that Fischbach's transfers were a "practice."

The court made prejudicial comments and instructions throughout the entire first trial. The confused jury requested more definitions of discriminatory, arbitrary and bad faith. Moore said he didn't understand the instructions, but the court sent back the same instructions with even more confusing instructions (mentioning negligence seven times in contrast to the one ludicrous instruction on bad faith), ignoring

requests to modify them.

After the remaining issues were tried the court gave openly prejudicial instructions on Local 569's role in Atkinson's rejection, that the jury couldn't consider § 404(b) evidence of assaults, that Moore's win in another case was not a "final judgment" (it was) and on union expulsion of him for filing the previous case.

Moore was not allowed to add assault claims against Degener back to date of filing, despite his constant requests (ignored) to discover if Degener was a Local 569 agent, and was allowed only an emotional distress claim (Degener lied at trial about his conviction for carrying a concealed weapon at Local 569, belonging to a murder-for-hire group, and Robbins admitted seeing Degener with guns at Local 569).

His motions JNOV or for a new trial on the second Trial Board and the emotional distress claim against Degener, where punitive damages awards were negated on grounds no compensatory damages were awarded (but neither compensatory nor nominal damages had been mentioned in that

special verdict question), were denied.

The court refused injunctions against Union Defendants using disciplinary hearings against Moore. Summary judgment to biased, hand-picked (from 2700 Local members) Trial Board officers was outrageous. FRCP 56(f) Declarations showed refusal to produce requested discovery, and the Defendants were shielded by the court.

After individual officers were dismissed, the court permitted Moore to attempt to put a Trial Boards case together at trial, but only against Local 569. But Defendants' repulsive demeanor during their case sank them (they were paraded on when Moore had no time and could do cross-examination for only 15 minutes). The court helped them with jury instructions that begged the question Moore wronged his assaulter Morrison in the only claim against the IBEW.

Union refusal to permit Moore to question the only witness against him (Smith) in the second Trial Board and illegible transcripts of Trial Board hearings should also have been the subject of jury instructions. But Trial Board

officers' bias was so obvious Moore still won (but the inadequate jury verdict form cheated him out of awarded damages).

Lack of time limited proof and favored the Defendants, because Moore could refute lies as often as they were made, but the court double-whammied Moore by putting him on a short time leash and refusing to make rulings of law.

The Union's trial strategy was limited to personal attacks on Moore, and the lack of time prevented him from rebutting trial allegations by Wells that he politicked on jobs and handed out papers, or had even worked with Wells, and Wells' comments also prejudiced the jury.

Moore showed personal attacks by Westfall, Hahn and Morrison were poorly rehearsed lies, but Simpson, Riel and Aylsworth merely name-called, and those non-factual attacks were impossible to impeach, and required rebuttal.

The court promised a tight time schedule and updated the jury constantly, implying that one extension for Moore delayed the schedule.

The Appeal Court affirmed the lower court,

held Moore was not prejudiced by exclusion of evidence of Fischbach debarments, that Atkinson rejected Moore because he was "litigious and disruptive," that he was barred from objecting to jury instructions on appeal because he did not object at trial (ignoring those instances when he did), and that the district court had "generously extended" trial time (ignoring its refusal to permit rebuttal).

The Appeal Court did not comment on failure to mention "compensatory" and "nominal" damages in the jury verdict form, ignored limitation of attorney fees to claims won (despite all claims being closely related) and to rates paid (not current market rates), ignored denial of expert witness fees requested with attorneys fees, and ignored awards of witness fees to Fischbach and costs of copying Moore's case file to the IBEW.

The Appeal Court affirmed dismissal of his declaratory relief claims by the district court -- for equal space in the Union newsletter and from assessments for the Building Trades, and ignored his request for a jury trial.

VI. ARGUMENT

I.

This petition should be granted because the district court's decision to make breaches of contract (a CBA) subject to later decisions by a joint union-management committee of the same parties who conspired, by breaching the CBA, to defraud the federal government of hundreds of millions of dollars conflicted with applicable decisions of the Supreme Court. Application of Supreme Court precedent here is both clear and unmistakable, and was cited to by the district court to first deny summary judgment motions.

Despite later decisions, Plaintiff was not required to submit that controversy to a group chosen by the defendants against whom the real complaint here was made. *Glover v. St. Louis-S.F. Ry.*, 89 S.Ct. 548, 551-2 (1969).

The court later rejected both precedent and its own holdings to permit that corrupt defense contractor to escape, and by flying in the face of the precedent deliberately sought to confuse the issues and obfuscate the law.

The Unions have a statutory duty to fairly represent bargaining unit members in enforcing CBAs. *Vaca v. Sipes*, 386 U.S. 171 (1967). A member may sue both the IBEW and Local 569 for breach of contract (by violating CBA referral procedures) as was done in this case. *Wooddell v. IBEW Local No. 71*, 112 S.Ct. 494 (1991).

The district court acknowledged Fischbach conspired with Local 569 to transfer employees to Fischbach-created "puppet" entities to evade federal debarment orders, and violated the CBA by the transfers. The court also acknowledged Local 569 business manager Pridemore (who had approved the transfers) and Fischbach conspired via a joint union-management hearing (without a grievance or participation by Plaintiff) and again approved the transfers in order to move for summary judgment a second time.**20**/

Plaintiff eschewed involvement in *ex post facto* hearings, and filed no related breach of DFR claim since Local 569 did not represent him

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20/. S. Appx., at pp. 5-20.

at those hearings (sic). Denial of that second motion for summary judgment (based on argument those hearings were *res judicata* on the court) put "the focus. . .on whether the employer breached the contract. . .." *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. at 568 (1967).

Local 569's breach of duty to Plaintiff and other members to administer the CBA referral procedure fairly (by colluding with Fischbach) also pre-empted its ability to participate in any fair hearing on whether its collusion with Fischbach had resulted in direct CBA breaches.

Thus, Plaintiff's suit to recover damages from Local 569 and Fischbach for violations of the CBA referral procedure would lie under the Labor Management Relations Act authorizing such suits and relieved the Plaintiff of requirement to exhaust CBA remedies. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1967). See also *Del Costello v. Intern'l Broth. of Teamsters*, 462 U.S. 151 (1983); *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56 (1981); *Czosek v. O'Mara*, 397 U.S. 25 (1970); *Vaca v. Sipes*, 386

U.S. 171 (1967) (if union breaches DFR employer can't insist on exhaustion of CBA remedies).

But the district court made trial on those transfers (Local 569 and Fischbach admitted the breaches of their CBA and their motive) subject to trial on whether Local 569 breached its DFR at grievance hearings held by the conspirators without any grievance ever being filed.

But when the court saw an opportunity to dismiss Fischbach (during trial on the issue of whether Local 569 tainted grievance hearings), it held Local 569 "waived" all rights to those hearings by its "acquiescence" in the transfers (S. Appx. 76). If Local 569 waived the issue being tried, the trial was obviously a sham.

The court also used every device imaginable to subvert even that trial (including refusing to make rulings of law and denying him summary judgment while stating no facts on the original breach were in dispute) and allow defendants to escape from trial on the only issue sued for.

The Appeals Court overstepped boundaries of accepted procedure and sanctioned lower court

departures from the usual course of judicial proceedings by begging that question the lower court contrived: that Plaintiff had challenged finality of arbitration (no arbitrator was ever involved) and that evidence of the hundreds-of-millions-of-dollars-motive was prejudicial and irrelevant, and such dishonesty requires this Court to exercise its powers of supervision.21/

The Circuit Court also ignored Plaintiff's appeal of denial of leave to certify the claim as a class action (S. Appx. at 53-54) which was ironic since he represented a class of the same persons in breach of fiduciary duty causes of action in this case, and won for them.

21/. S. Appx., at pp. 122-23. Moore believes he can infer a collusive relationship between the district court judge and the chief judge of the Ninth Circuit (he heard this appeal) who both sit in San Diego and whose connections to former San Diego resident Ed Meese (tied to one New York corporation that defrauded the Federal Government of $millions) have been published.

The chief judge appointed the author of the biased opinion in *Moore v. IBEW Local 569*, 989 F.2d 1534 (9th Cir. 1993), which opened with an *ad hominem* and hid Moore's wins on every issue at trial. Since he won this case all Moore's judgments were given to the Union and Fischbach (which had threatened Moore repeatedly it would happen if he appealed Fischbach's escape).

II.

This petition should also be granted on the breaches of contract and unfair labor practices committed by Atkinson and the Union Defendants to reject Plaintiff from employment for "union-connected" activities. Refusal to permit those breaches of contract and unfair labor practice from being litigated conflicts with decisions of this Court, and application of the decisions as precedent is clear and unmistakable.

Federal courts have concurrent jurisdiction with the NLRB over breaches of a union's duty of fair representation in the administration of a hiring hall and an accompanying suit against a contractor for breach of contract. *Breininger v. Sheet Metal Workers*, 493 U.S. 67 (1989).

This Court has held a union has the duty

> "to exercise fairly the power conferred upon it in behalf of all of those for whom it acts, without hostile discrimination against them."

Steele v. Louisville & Nashville R.R., 323 U.S. 192 (1944). Reckless exercise of unions' power to interfere with employment of dissident union

members was overruled both by the NLRB and this Court. *Wallace Corp.*, 50 NLRB 138, *enf'd.*, 323 U.S. 248 (1944). Such abuse of power by unions after passage of the National Labor Relations Act (Wagner Act) in 1935 encouraged Congress to amend the NLRA by passing the Labor-Management Relations Act of 1947. As Senator Taft stated:

> It is contended that the employer should be obliged to discharge the man because the union does not like him. That is what we are trying to prevent. I do not see why a union should have such power over a man in that situation.

93 *Congressional Record*, 4191 (1947).

L.M.R.A. § 8(a) delineates a list of unfair labor practices which forbid both the union and employer from manipulating employees' economic status to tighten or loosen union discipline and control over the membership. Both the NLRB and this Court have held that discipline of a union member by causing his discharge is an unfair labor practice. *Radio Officers' Union, AFL v. N.L.R.B.*, 347 U.S. 17 (1954).

Furthermore, the NLRB has repeatedly found that collusionary employer behavior designed to

strengthen discipline a union can exercise over members is an unfair labor practice, and held the employers and unions jointly responsible, whether because the employer responded to union pressure, it wished to strengthen its congenial relations or it took the initiative to persuade union officers of his good will. *Cf. Food Fair Stores, Inc.*, 131 NLRB 756 (1961) (union member refused to pay assessments); *Checker Taxi Co.*, 131 NLRB 611 (1961) (fired member who irritated the union by pressing monetary claims); *Pacific Maritime Ass'n*, 23 NLRB 559 (1959)(rejected a member who sued the union); *Nassau and Suffolk Contractor' Ass'n*, 123 NLRB 1393 (1959) (fired a member whom the union had expelled); *Falstaff Brewing Corp.*, 128 NLRB 294 (1960) (fired two members who filed written complaint about union representation with Intern'l Union); *Southern Electrical & Pipefiting Inc*, 131 NLRB 44 (1961) (rejected because "unacceptable" to the union).

The NLRB has found specific union actions to be unfair labor practices. *Puerto Rico Dry Dock & Marine Terminals*, 123 NLRB 1298 (1959)

(pressured employer to fire member, on pretext of nonpayment of dues, who had participated in opposition movement). Where employers needing sharply fluctuating access to workers (such as in the construction trades) willingly surrender responsibility for hiring halls to unions, they have traditionally abused their authority and discriminated against non-members and dissident members. The NLRB concluded that any exclusive union hiring halls were *per se* discriminatory, and were a means of thwarting the policy of the LMRA. *Mountain Pacific Chapter of Associated General Contractors, Inc.*, 119 NLRB 883 (1957); *United Association of Journeymen & Apprentices (Brown-Olds)*, 115 NLRB 594 (1956); *Los Angeles-Seattle Motor Express Inc*, 121 NLRB 1629 (1958) Federal courts also agreed. *N.L.R.B. v. Local 176, United Bro'hood of Carpenters and Joiners*, 276 F.2d 583 (union hiring halls discriminate against those choosing to enforce their rights, as illustrated in *Mountain Pacific*).

Rather than outlaw the union administrated hiring hall, the NLRB, in the *Mountain Pacific*

case, established that CBAs must provide for three conditions that would negate an inference of illegal discrimination: nondiscriminatory referral; the employer's right to reject any applicant referred (to counter union favoritism in job referrals); and those nondiscriminatory standards must be posted in the hiring hall.

In 1961 this Court issued four decisions on the same day overruling the NLRB decisions that union hiring halls are *per se* illegal. *Local 357, Intern'l B'hood. of Teamsters v. N.L.R.B.*, 365 U.S. 651; *Local 60, United Brotherhood of Carpenters v. N.L.R.B.*, 365 U.S. 651; *N.L.R.B. v. News Syndicate Co.*, 365 U.S. 695; *Intern'l Typographical Union v. N.L.R.B.*, 365 U.S. 705. NLRB findings of discriminatory referrals must be on a case by case basis.

The history of an employer's ability to reject an employee as interpreted by this Court shows very clearly that both Atkinson and Local 569 officers committed an unfair labor practice and breached the intent of the CBA job referral procedure by colluding to reject Plaintiff for

his "union-connected" activities. Unions must administer referral procedures fairly. *NLRB v. Boilermakers, Local 154*, 253 NLRB 747 (1980).

Atkinson knew Wells committed an unfair labor practice, and argued NLRB preemption in its moving papers and that Plaintiff had missed the NLRB filing deadline. The district court turned its back despite acknowledging Atkinson could not reject Plaintiff for Union activities but erroneously said Moore could be rejected as a contract right as "disruptive and litigious."

Local 569 business manager Smith (who had approved his rejection by phone after Plaintiff accepted Atkinson's request for an electrician and was driving to its jobsite) and assistant Godshalk refused to press and had perfunctorily dismissed the grievance filed by Plaintiff upon return from Atkinson's job site. See *Vaca v. Sipes*, 386 U.S., at 191 (1967).

There was no evidence that Plaintiff was "disruptive" when Atkinson was granted summary judgment, and the district court prejudiced the jury by permitting Wells' allegations that he

"handed out papers on a [previous] job" to be presented without any rebuttal, and by cutting off cross-examination at the point that Wells' resentment and hostility began to show.

The Appeals Court's affirmation of unfair labor practices by holding the employer could reject under the CBA if he didn't discriminate on the basis of "union activity or race or sex" begged the question and set up a straw man, and overstepped boundaries of accepted procedure to sanction lower court departure from the usual course of judicial proceedings so as to require exercise of this Court's power of supervision..

There is no doubt that Plaintiff was the victim of a nationwide Union/NECA practice of interpreting the right to reject as absolute in order to blacklist all dissident union members. *Cf. Parsons Electric and IBEW Local 292*, 304 NLRB 115, 138 LRRM 1214 (1991) (rejection of a Minnesota electrician for his union-connected activities is an unfair labor practice); *N.L.R.B. v. Carpenters Local No. 35*, 739 F.2d 479 (9th Cir. 1984), *cert. denied*, 105 S.Ct.

3477, 87 L.Ed.2d 613 (employee's attempts to change performance of union CBA representatives and correct violations of election procedures and misuse of the union's funds are protected activities). See also *NLRB v. Laborers Int'l Union, Local 300*, 613 F.2d 203 (9th Cir. 1980) cited by the Appeals Court at S. Appx., at 115.

III.

This petition should be heard because the district court's decision to deny recovery of funds after a jury found that union officers breached fiduciary duties to the union by self-dealing union monies to buy golden parachute pensions conflicts with the decisions of all other courts of appeals on the same issues.

The district court's decisions to also deny recovery of union monies used by self-dealing officers for their losing defense against the union's breach of fiduciary duty action -- and to instead impose attorneys fees on the member who successfully sued the self-dealing officers -- also conflicts with all other circuits.

The Circuit Court overstepped boundaries of accepted procedure to sanction these outrageous departures from the usual course of judicial proceedings and used sophistry to ignore even its own precedent, thereby requiring exercise of the Supreme Court's power of supervision.

These two matters also present questions of federal law which have not been, but should be, decided by the Supreme Court. *National Mutual Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 69 S.Ct. 1173, 93 L.Ed. 1556 (1949).

This conflict involves an important federal question regarding the scope and the embodiment in the LMRDA by congress of the clear intention that members have the right to full and active participation in their Union's affairs. Local 569 officers dealt with the Union as an adverse party within the meaning of LMRDA § 501 by self-dealing the union's funds.22/

The conflicts related to self-dealing union funds for inflated pensions and to whether in-

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22/. LMRDA § 501 is at Appendix, p. 79.

house counsel can represent officers sued for breaching fiduciary duties by stealing from the union is not one unlikely to recur, since it is endemic, and neither one results from a unique factual situation, nor involves variations in factual bases between conflicting rulings.

The conflicts can be effectively resolved by only the Supreme Court because Plaintiff has exhausted the circuit court appeal process, and the conflict permits aberrations of settled law which create disagreements below, and it should be promptly resolved. Defendants have not been ordered to repay money stolen, or money used to defend against the suit, and pensions were not modified. Defendants' individual Union Pension Trust accounts are all still credited with the fruits of stolen money, and distorted pensions are still being collected.

Plaintiff moved to recuse in-house counsel, but was denied and ordered to pay $6,846.75 in attorneys fees for bringing the motion, posted a bond, prevailed at trial and the bond should have been returned (but see S. Appx. 2, 120).

The jury found officers had breached their fiduciary duty to Local 569 by overseeing, allowing, or ratifying inflated pensions, and 21 officers were named (S. Appx., at 96, 109).

LMRDA § 501(b) expressly authorizes suits "to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization." *Phillips v. Osborne*, 403 F.2d 826 (9th Cir. 1968). Courts have ordered restitution of money paid to a union officers, and union funds expended in the legal defense. *Kerr v. Shanks*, 466 F.2d 1271 (9th Cir. 1972), *cert. denied*, 412 U.S. 918; *Pignotti v. Sheet Metal Workers' Intern'l Ass'n*, 477 F.2d 825 (8th Cir. 1973), *cert. denied*, 414 U.S. 1067 (pension contributions ordered refunded); *Hood v. Journeymen Barbers, etc.*, 454 F.2d 1347 (7th Cir. 1972); *Morrisey v. Curran*, 482 F.Supp. 31 (DC SDNY 1979), *aff'd, rev'd, and vacated in part on other grounds*, 650 F.2d 1267 (2nd Cir.) (restitution to pension fund required).

Plaintiff's prayer for relief asked that Local 569 be reimbursed for all money taken and

for attorneys fees, costs and damages, but the district court ignored his appropriate requests for restitution, and instead assessed attorneys fees against the Plaintiff because he properly moved to recuse in-house union counsel.

Officials are not entitled to use of union funds to pay fees of attorneys who represented them in § 501 action. *Highway Truck Drivers & Helpers, etc. v. Cohen*, 334 F.2d 378 (3rd Cir. 1964), *cert. denied*, 379 U.S. 921 (1964). The Defendants are not allowed to rely on the legal services of attorneys who served as counsel for the union indirectly involved in the action. *Tucker v. Shaw*, 378 F.2d 304 (2d Cir. 1967); *Yablonski v. United Mine Workers*, 488 F.2d 1175 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 906 (representation of officials by house counsel is a conflict of interest); *Kerr v. Shanks*, 466 F.2d 1271, 1277 (9th Cir. 1972), *cert. denied*, 412 U.S. 918; *Holdeman v. Sheldon*, 204 F.Supp. 890, *aff'd*, 311 F.2d 2 (2d Cir. 19__).

Courts have unanimously granted attorneys fees where unions benefitted from such suits,

and not just where plaintiffs recovered money. *Highway Truck Drivers v. Cohen*, 220 F.Supp. 735 (E.D. Pa. 1963); *United Bhd. of Carpenters v. Brown*, 343 F.2d 872 (10th Cir. 1965); *Gilbert v. Hoisting and Portable Engineers*, Local 701, 384 P.2d 136 (1963), *cert. denied*, 376 U.S. 963 (1964) (attorneys fees awarded and fact that no money or property was involved did not detract from importance of the litigation), 390 P.2d 320 (1964) (attorneys fees awarded on appeal); *Bakery & Confectionery Workers v. Ratner*, 335 F.2d 691 (D.C. Cir. 1964) (attorneys fees are allowable for other than monetary relief); *Intern'l Ass'n of Bridge, etc. v. Norris*, 383 F.2d 735 (5th Cir. 19___) (attorneys fees attaches if some benefit realized).

There is no such authority for any award of attorneys fees against a member who sucessfully represents the union in a suit against officers for breach of fiduciary duty under LMRDA § 501, and the district court decision to impose such fees was unjustified, as was the Appeal Court's invalid alibi (S. Appx., at pp. 120-21).

IV.

The district court's decision to grant the IBEW and Local 569 summary judgment on claims that the IBEW "policy" used to stop Plaintiff from running for IBEW convention delegate was reasonable conflicts with applicable decisions of the Supreme Court, application to the case at hand is clear and unmistakable, and courts below failed to follow that precedent.

The Appeals Court overstepped boundaries of accepted procedure to sanction those departures from the usual course of judicial proceedings, and by calling a policy a rule to dismiss for

> "lack of subject matter jurisdiction . . . over a claim that challenges the rules governing the eligibility of candidates for union office."

S. Appx. at 126. It thereby solicited exercise of the Supreme Court's supervision powers.

Plaintiff belongs to two Unions, the IBEW and Local 569. *Wooddell v. IBEW Local 71*, 112 S.Ct. 494 (1991). IBEW "policy" is to prohibit members who oppose business managers of Locals from running for convention delegate. A Bylaw which is mandatory for all Locals combines with

that policy to ensure absolute control by IBEW officers over the conventions where the IBEW constitution is written, its president, vps and executive board are elected. That Bylaw makes incumbent business managers and presidents both automatic "appointed" convention delegates (the IBEW pays their way to the convention).

The justification for an eligibility rule having a pronounced undemocratic effect is by showing the rule serves valid union interests. *Doyle v. Brock*, 821 F.2d 778 (D.C. Cir. 1987), citing *Local 3489, United Steelworkers v. Usery*, 429 U.S. 305, 97 S.Ct. 611, 50 L.Ed.2d 502 (1977) (invalidating other restrictive IBEW imposed Bylaws). IBEW interests aren't valid.

Abuse of the unarticulated "policy" by the IBEW as an unduly restrictive qualification is fully actualized, and combined with a mandatory bylaw, results in a large undemocratic effect. *Wirtz v. Hotel, Motel & Club Employees Union*, 391 U.S. 492, 88 S.Ct. 1743, 20 L.Ed.2d 763 (1968) ("implicit in the legislative history of the [LMRDA] and in its wording" is that every

member in good standing shall be eligible to run for office and such unduly restrictive candidacy qualifications can result in the very abuses of entrenched leadership that the LMRDA was expressly enacted to curb); *Retail Clerks Local 648 v. Retail Clerks Intl. Ass'n*, 299 F.Supp. 1012 (DC D.C. 1969) citing *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221, 83 S.Ct. 1139, 10 L.Ed.2d 308 (1963); *New England Telephone and Telegraph Co. v. I.B.E.W.*, 384 F.Supp. 752 (D.C.Mass. 1974).23/

The policy and bylaw that automatically

23/. The policy to disqualify members who run against Locals' incumbent business managers and presidents eliminates convention dissent. Both incumbents are the first 2 appointed delegates. 755 Locals send only one or two delegates (10 members can send one appointed delegate, but a Local must have 626 members to send the third (its first) elected delegate, and 1,126 members to send 5 -- 3 elected and 2 appointed.

IBEW vice-presidents and Executive Boards are elected in caucuses where each Local gets one vote, decided by the Local's delegates (a tie vote means no vote). In order to out-vote the two appointed delegates a Local has to be able to send five delegates. Only 168 Locals send 5 or more delegates (133 send 3 or 4).

The result is a majority of 1547 appointed delegates and 1080 elected. The IBEW president is elected and the constitution is amended by non-secret roll call vote.

sends Locals' business managers and presidents to the IBEW convention is also a deliberate unlawful attempt to suppress dissent within the union. *Cotter v. Owen*, 753 F.2d 223 (2nd Cir. 1985). Moore's rights were violated by the undemocratic, unconscionable "policy."

> A qualification which is not part of the constitution and bylaws or other duly enacted rules of the organization may not be the basis for denial of the right to run for office, unless required by Federal or State law.

29 C.F.R. Sec. 452.53, as quoted in Kaplan, Qualifications for Union Office, 24 ALR Fed 651, at 657. Elimination of the IBEW policy would move it toward the Congressional goal of union democracy articulated in the L.M.R.D.A.

V.

The district court decision to grant Local 569 summary judgment (on claims that his LMRDA Title I rights were violated by pre-election conduct of incumbent officers in 1986 and 1989 elections) on grounds a separate suit by the U.S. Secretary of Labor under LMRDA Title IV

for election irregularities was *res judicata* on Plaintiff's suit conflicts with the applicable decisions of the Supreme Court, application to the case at hand is clear and unmistakable, and courts below failed to follow that precedent.

The Circuit Court overstepped boundaries of accepted procedure to sanction these outrageous departures from the usual course of judicial proceedings by the district court, and used sophistry to state falsely that,

> "Moore had previously sought relief for these claims through an action filed with the Department of Labor. The department and Local 569 settled these claims. Another district court approved the settlement. The record supports the court's conclusion that res judicata barred Moore from relitigating.

S. Appx., at p. 127. On its face that ruling shows Plaintiff did not seek relief from the DOL for his Title I claims (DOL jurisdiction is over Title IV), that he was never a party (or intervenor) who "settled" an action filed with the DOL, and was not "relitigating" any claims.

By approving the district court's false record and deliberately making its false record

the appellate court shows it requires exercise of the Supreme Court's powers of supervision.

Blackwood and his agents abused Union funds to support his candidacy in the 1986 election, and Smith used union funds to oppose the DOL's suit for a new election because of that abuse.

On November 21, 1988 and April 1, 1991 the district court denied Local 569's motions for summary judgment on claims it violated LMRDA Title I rights of the Plaintiff during the 1986 campaign, and rejected arguments that Plaintiff was challenging the election (S. Apx., at 48).

But during matters in limine Local 569 was granted summary judgment on the Title I claims based on *res judicata* effect of the denial of summary judgment to the DOL in its LMRDA Title IV action to force a new election. Plaintiff's claim for infringement of LMRDA Title I rights by officers' use of union funds and facilities during the 1986 and 1989 elections was denied.

The Supreme Court has stated that Title I claims for pre-election conduct are not barred by Title IV as long as the Title I claim does

not challenge the validity of that election. *Local No. 82, Furniture & Piano Movers v. Crowley*, 104 S.Ct. at 2566, n. 16 (1984), citing *Ross v. International Brotherhood of Electrical Workers*, 513 F.2d 840 (9th Cir. 1975) (validating a post election common-law tort claim); *Dunlop v. Bachowski*, 95 S.Ct. at 1857-58 (1975) (LMRDA Title I provisions on pre-election conduct are enforceable in post-election suits by union members); *Kapau v. Yamamoto*, 622 F.2d 449, 455 (9th Cir. 1980).

VI.

Lower court summary judgment to Local 569, the IBEW and their officers on his claims they violated LMRDA §§ 101 and 609 by disciplining him conflicts with Supreme Court decisions, and application to this case is clear, unmistakable and lower courts failed to follow precedent.

The Appeals Court overstepped boundaries of accepted procedure to sanction these outrageous departures from the usual course of judicial proceedings by the district court, requiring an

exercise of this Court's power of supervision for their application of false standards.

By approving the lower court's false record the appellate court shows it requires exercise of the Supreme Court's powers of supervision.

The Supreme Court has decided the "Congress . . . meant instead to denote only punishment authorized by the union as a collective entity to enforce its rules" by "discipline" as used in §§ 101 and 609. *Breininger v. Sheet Metal Workers*, 110 S.Ct. at 438-39 (1989). Officers acted "under color of the Union's right to control Plaintiff's conduct in order to protect the interests of the union or its membership" to illegally discipline him here.

Fines, suspensions, expulsion, assaults and blacklisting reached a fever pitch after Moore complained about the 1986 election and increase of an assessment for the Building Trades, and opposed proposals for a new CBA. No voting was allowed on his proposed Bylaws until his second suspension and after passing the IBEW president vetoed them and a Bylaw for recalling officers.

Charges against Local 569 and IBEW officers as per the IBEW constitution (they must be made to the same IBEW officers) on their attempts to discipline him by violating his free speech rights, assaults and batteries were ignored.

Appeals of fines, suspensions, denials of complaints on elections, affirmations of Trial Board fines and suspensions, vetoes of bylaws proposals, interference with CBA proposals and wrongful impositions of Bylaws and assessments were also ignored for ten years.

IBEW officers found no wrongful acts by the Local officers despite contrary findings by the DOL and two juries in two cases. The court has found nothing wrong in IBEW officers' approach to their appellate and review functions, and it always used sophistry to dismiss them (and the Appeals Court always affirmed) even when Barry held charges against officers in abeyance until this case was decided, while refusing to hold fines and suspensions of Plaintiff in abeyance (after the district court dismissed claims related to appeals, complaints and charges,

IBEW president Barry then dismissed them all).

VII.

Summary judgment was granted to Plaintiff on Local 569's illegal increase of assessments for the Building Trades, but not refunded to others despite a clear prayer for relief and motion to bring all such acts in the Complaint under the breach of fiduciary duty claim.

The assessment is not a legitimate expense of collective bargaining because the Building Trades is not even the exclusive representative of any bargaining unit. *Cf., Lehnert v. Ferris Faculty Ass'n*, 111 S.Ct. 1950 (1991); *Intern'l Ass'n of Machinists v. Street*, 81 S.Ct. 1784 (1961). Prayers for declaratory relief from paying the assessment as a condition of getting hiring hall job referrals, for equal space to respond to attacks in the Union newsletter, and on other declaratory relief claims should have been given to the jury. F.R.C.P. 57; *California v. Sierra Club*, 451 U.S. 287 (1981).

VIII.

Plaintiff's request for attorneys and law clerks fees for related claims at market rates were modified to rates paid for claims won, and conflicts with decisions of the Supreme Court. *Blum v. Stenson*, 465 U.S. 886 (1984); *Missouri v. Jenkens*, 109 S.Ct. 2463 (1989). His request for expert witness fees as part of the attorney fees award should have been granted. *Thornberry v. Delta Airlines, Inc*, 676 F.2d 1240 (9th Cir. 1982), citing *Northcross v. Board of Education of Memphis City Schools*, 447 U.S. 911 (1980).

The breach of contract against Fischbach did not come to trial, it was never a party at trial and shouldn't have been awarded $350.00 for a witness called by Local 569 in its case. Nor should the IBEW have been awarded $750.00 "exemplification" costs for copying Plaintiff's entire case file (after the court ordered him to permit that), none of which was ever used as an exhibit in the case at any time.

Dated: 9-01-1994 Lawrence Moore

Lawrence Moore

APPENDIX

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NATIONAL LABOR RELATIONS ACT

Unfair Labor Practices (29 U.S.C. 158)

Sec. 8 (a)It shall be an unfair labor practice for an employer --

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election

held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(b) It shall be an unfair labor practice for a labor organization or its agents--

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in

section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(5) to require of employees covered by an agreement authorized under subsection (a)(3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the

circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

LABOR MANAGEMENT RELATIONS ACT

Suits By and Against Labor Organizations

(29 U.S.C. 185)

Sec. 301. (a) Suits for violation of contracts between and employer and a labor organization representing employees in an industry affecting commerce as defined in the Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose

activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal offices or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United

States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT

Declaration of Findings, Purposes, and Policy

(29 U.S.C. 401)

Sec. 2. (a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they

represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations

consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market

for goods flowing into or from the channels of commerce.

TITLE I - BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS (29 U.S.C. 411)

Sec. 101. (a)(1) Equal Rights. - Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of Speech and Assembly. - Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and

reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) Dues, Initiation Fees, and Assessments. - Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except -

(A) in the case of a local organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such

question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until

the next regular convention of such labor organization.

(4) Protection of the Right To Sue. - No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested employer or employer association shall directly finance, encourage, or participate in, except as a

party, any such action, proceeding, appearance, or petition.

(5) Safeguards Against Improper Disciplinary Action. - No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

TITLE V - SAFEGUARDS FOR LABOR ORGANIZATIONS

Fiduciary Responsibility of Officers of Labor Organizations (29 U.S.C. 501)

Sec. 501. (a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and

to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

(b) When any officer, agent, shop steward, or representative of any labor organization is

alleged to have violated the duties declared in subsection (a) and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses

necessarily paid or incurred by him in connection with the litigation.

(c) Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000.00 or imprisoned for not more than five years, or both.

TITLE VI - MISCELLANEOUS PROVISIONS

Prohibition on Certain Discipline by Labor Organization (29 USC 529)

Sec. 609. It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of section 102 shall be applicable in the enforcement of this section.